

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Fascinations, Inc. (“Fascinations”), with Moore and Fascinations each individually referred to as a “Party” and collectively as the “Parties.” Moore is an individual residing in the state of California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Fascinations employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Moore alleges that Fascinations manufactures, sells, and/or distributes for sale in the state of California, tools with vinyl/PVC grips containing the chemical di(2-ethylhexyl)phthalate (“DEHP”) without providing the health hazard warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the state of California to cause birth defects and/or other reproductive harm.

### 1.3 Product Description

The products covered by this Settlement Agreement are tools with vinyl/PVC grips containing DEHP that are manufactured, sold and/or distributed for sale in the state of California by Fascinations, including, but not limited to the, *Fascinations 3-Piece Metal Earth Tool Kit, Item #MMT001, UPC #0 32309 00105 1* (collectively, “Products”).

### 1.4 Notice of Violation

On December 6, 2016, Moore served Fascinations and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Fascinations violated Proposition 65 when it failed to warn its customers and consumers

in California that the Products expose users to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

### **1.5 No Admission**

Fascinations denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed in the state of California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Fascinations of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Fascinations of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Fascinations. This Section shall not, however, diminish or otherwise affect Fascinations' obligations, responsibilities, and duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date on which this agreement is executed by the Parties.

## **2. INJUNCTIVE SETTLEMENT TERMS**

### **2.1 Reformulated Products**

Commencing no later than thirty days from the Effective Date, and continuing thereafter, Fascinations shall only sell, purchase for sale, or distribute for sale in the state of California, "Reformulated Products" or Products that are sold with a clear and reasonable health hazard warning in compliance with Section 2.2. "Reformulated Products" shall mean Products containing no more than 1,000 parts per million DEHP in any component when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance.

## **2.2 Clear and Reasonable Warnings**

For all Products that are not Reformulated Products, Fascinations agrees to provide a clear and reasonable consumer warning in accordance with this Section. Fascinations further agrees that any warning utilized will be prominently placed with such conspicuousness as compared with other words, statements, designs or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. For purposes of this Settlement Agreement, a clear and reasonable warning for DEHP in Products sold in California shall consist of a warning affixed to the Products' packaging, label or tag, or directly to the Products, and containing the following language:

**WARNING:** This product contains DEHP, a chemical known to the state of California to cause birth defects or other reproductive harm.

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Fascinations agrees to pay a total of \$4,000 in civil penalties. This penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining 25% of the penalty amount paid to Moore. Fascinations will provide the payment in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$3,000 and (b) "John Moore, Client Trust Account" in the amount of \$1,000. Moore's counsel will deliver to OEHHA the latter's portion of the penalty paid under this Settlement Agreement.

### **3.2 Reimbursement of Moore's Attorneys' Fees and Costs**

The Parties reached an accord on the compensation due to Moore and his counsel under general contract principles and the private attorney general doctrine codified at

Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, within five business days of the Effective Date, Fascinations agrees to pay \$25,500 in the form of a check made payable to “The Chanler Group” for all fees and costs incurred investigating, bringing this matter to the attention of Fascinations’ management, and negotiating and executing this Settlement Agreement.

### **3.3 Payment Address**

All payments required by this Settlement Agreement shall be delivered to the following address:

The Chanler Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 Moore’s Release of Fascinations**

This Settlement Agreement is a full, final and binding resolution between Moore and Fascinations of any violation of Proposition 65 that was or could have been asserted by Moore on his own behalf or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Fascinations, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Fascinations directly or indirectly distributes or sells the Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (“Releasees”), based on a failure to warn about exposures to DEHP in Products sold or distributed for sale in California by Fascinations prior to the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Moore, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any right to institute or participate in,

directly or indirectly, any form of legal action and releases all claims that he may have against Fascinations and Releasees, including, without limitation, all actions and causes of action in law and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees, arising under Proposition 65 with respect to the alleged failure to warn about exposures to DEHP from Products sold or distributed for sale in the state of California by Fascinations before the Effective Date. The releases provided by Moore under this Settlement Agreement are provided solely on Moore's behalf and are not releases on behalf of the public.

#### **4.2 Fascinations Release of Moore**

Fascinations, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims it may have against Moore and his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Moore and his attorneys and other representatives, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

#### **4.3 Mutual California Civil Code section 1542 Waiver**

Moore in his individual capacity only and not in any representative capacity, and Fascinations, each on his/its own behalf, and on behalf of his/its agents, attorneys, representatives, successors and assigns, also provide a general release which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Moore or Fascinations of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of any alleged violations of Proposition 65 with respect to the Products sold by Fascinations, as set forth in the Notice, or as to Moore or Moore's counsel in connection with investigating the claims and the Products

that are the subject of this Settlement Agreement. Moore and Fascinations each acknowledge and represent that he/it is familiar with Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Moore and Fascinations each expressly acknowledge and hereby waive the provisions of Section 1542 of the California Civil Code.

**5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

**6. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the state of California and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise rendered inapplicable, by reason of law generally, or as to the Products, then Fascinations may provide written notice to Moore of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

**7. NOTICE**

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Fascinations:

William Hones, President  
Fascinations, Inc.  
19224 Des Moines Memorial Drive South  
Seatac, WA 98148

Allan E. Anderson  
Arent Fox LLP  
55 Second Street, 21<sup>st</sup> Fl  
San Francisco, CA 94105

For Moore:

Attn: Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

**8. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Moore and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

**10. MODIFICATION**

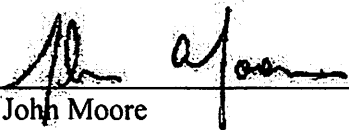
This Settlement Agreement may be modified only by written agreement of the Parties.

**11. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

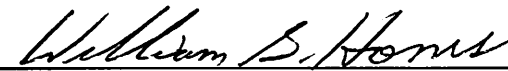
**AGREED TO:**

Date: 5/26/2017

By:   
John Moore

**AGREED TO:**

Date: 5/31/2017

By:   
William Hones, President  
Fascinations, Inc.